

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 432 - SB 1278

February 22, 2017

SUMMARY OF BILL: Creates three new class C felonies for reckless endangerment and an enhancement of one classification if the offense is deemed to be an act of “community terrorism”.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures – \$1,531,800/Incarceration*

Assumptions:

- Reckless endangerment is conduct that places or may place another person in imminent danger of death or serious bodily injury.
- Tennessee Code Annotated § 39-13-103 punishes reckless endangerment as a class C felony if the offense is committed by discharging a firearm into an occupied habitation. The proposed legislation creates three new class C felony reckless endangerment offenses if the offenses are committed by discharging a firearm (1) into a group of five or more people, (2) from within a motor vehicle, or (3) into a motor vehicle.
- Statistics from the Department of Correction (DOC) shows an average of 134.4 admissions per year for reckless endangerment committed with a deadly weapon, a class E felony. The proposed legislation will enhance some of these to class C felonies.
- It is assumed that 10 percent (13.4 admissions) are committed by discharging a firearm from within a vehicle, 10 percent (13.4 admissions) are committed by discharging a firearm into a motor vehicle, and five percent (6.7 admissions) are committed by discharging a firearm into a group of five or more people.
- Statistics from the DOC show the average time served for class E felony reckless endangerment involving a deadly weapon is 0.98 years. There is insufficient data to determine the average times served for class C felony reckless endangerment for discharging a firearm into an occupied habitation. Therefore, the average time served for class C felonies, 3.51 years, will be used.
- The proposed legislation will result in each offender serving an additional 2.53 years (3.51 - 0.98).
- According to the DOC, the average operating cost per offender per day for calendar year 2017 is \$68.75.

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- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for two ($13.4 \times .1178$) additional admissions for discharging a firearm from within a motor vehicle totaling 15 ($13 + 2$) admissions.
- Population growth will account for two ($13.4 \times .1178$) additional admissions for discharging a firearm into a motor vehicle totaling 15 ($13 + 2$) admissions.
- Population growth will account for one ($6.7 \times .1178$) additional admission for discharging a firearm into a ground of five or more people totaling eight ($7 + 1$) admissions.
- According to the DOC, 43.1 percent of offenders will re-offend within two years of their release. A recidivism discount of 43.1 percent has been applied to these estimates to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law.
- The recidivism discount will reduce admissions by six admissions (15×0.431) for discharging a firearm from within a motor vehicle, by six admissions (15×0.431) for discharging a firearm into a motor vehicle, and by three admissions (8×0.431) for discharging a firearm into a group of five or more people.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 23 offenders [(38 offenders – 15 recidivism discount) serving an additional 2.53 years (924.08 days) for a total of \$63,531 ($\68.75×924.08 days)]. The cost for 23 offenders is \$1,461,213 ($\$63,531 \times 23$).
- The proposed legislation also creates an enhancement if a class C felony offense is committed and the offense is found to constitute “community terrorism”. The proposed legislation defines “community terrorism” as any act by members of a criminal gang, which regularly engages in gang-related conduct or has a pattern of criminal gang activity, involving crimes against a population within the same geographic territory.
- An offense of reckless endangerment found to be an act of community terrorism is punished one classification higher than the underlying reckless endangerment offense.
- The average time served for a class C felony is 3.51 years; the average time served for a class B felony is 6.32 years. The proposed legislation will result in each enhanced offense serving an additional 2.81 years ($6.32 - 3.51$).
- It is assumed that one offense per year will be enhanced to a class B felony as community terrorism.
- Population growth and recidivism discount will not impact the number of admissions due to the low number that are estimated to be enhanced.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 2.81 years (1,026.35 days) at a cost of \$70,562 ($\$68.75 \times 1,026.35$ days).
- The total recurring increase in state incarceration costs is estimated to be \$1,531,775 ($\$1,461,213 + \$70,562$).
- The proposed legislation will not create any new offenses, but rather enhance existing offenses. It is assumed that the courts, district attorneys, and public defenders can accommodate the impact to their caseloads within their existing resources.

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

/trm